STATE OF MICHIGAN

COURT OF APPEALS

CENTER CONSTRUCTION COMPANY,

Plaintiff-Appellee,

v

LARRY F. WHETSTONE,

Defendant,

and

CAPITAL CROSSING BANK,

Defendant-Appellant,

and

ANTCLIFF WINDOWS & DOORS, INC., D & E ELECTRIC, INC., SHANK COUPLAND LONG COMPANY, ELITE EXTERIORS, R & R POURED WALLS, INC., AUTUMN GLO FIREPLACE SUPPLY, INC., and TROY JOHNS, d/b/a TROY JOHNS HARDWOOD FLOORS,

Defendants-Appellees.

UNPUBLISHED
June 19, 2007

No. 267835
Genesee Circuit Court
LC No. 03-077881-CZ

Before: Cooper, P.J., and Murphy and Neff, JJ.

PER CURIAM.

This appeal involves a priority dispute to the sale proceeds of real property between a successor mortgagee, Capital Crossing Bank, and several construction lien claimants. Capital Crossing appeals as of right, challenging the circuit court's order dividing the proceeds. We affirm in part and reverse in part. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The determination of this appeal requires interpretation of the Construction Lien Act ("CLA"), a legal issue that this Court considers de novo. *DLF Trucking, Inc v Bach*, 268 Mich App 306, 309; 707 NW2d 606 (2005). "It is a cardinal rule of statutory construction that a clear and unambiguous statute warrants no further interpretation and requires full compliance with its provisions, as written." *Northern Concrete Pipe, Inc v Sinacola Cos-Midwest, Inc*, 461 Mich 316, 320; 603 NW2d 257 (1999). But "[i]t is well settled that the CLA is remedial in nature, and 'shall be liberally construed to secure the beneficial results, intents, and purposes of (the) act.'" *DLF Trucking*, *supra* at 311, quoting MCL 570.1302(1). "It is similarly well-settled that the CLA was enacted for the dual purpose of (1) protecting the rights of lien claimants to payment for expenses and (2) protecting property owners from paying twice for these expenses." *Id*.

I. Lots 69 and 70

R & R Poured Walls, Inc., does not dispute that Capital Crossing had a mortgage on lots 69 and 70, which it recorded in April 2002, or that defaulted developer Larry F. Whetstone received funds pursuant to this mortgage before R & R poured foundations at these lots. The plain language of MCL 570.1119(4) gives Capital Crossing priority over R & R's construction lien interest, leaving no discretion to decide the issue in equity under MCL 570.1118. Accordingly, we reverse the trial court's award of a share of the proceeds of the sale of lots 69 and 70 to R & R Poured Walls, Inc.

II. Lot 65

On behalf of all other construction lien claimants regarding lot 65, R & R accepts on appeal, as it did before the circuit court, Capital Crossing's contention that it had priority to $98,620.70 in lot 65 sale proceeds (totaling $170,744.15) by virtue of its mortgage on lot 65, and the fact that the bank had advanced the $98,620.70 pursuant to a line of credit *before* any construction work on lot 65 had occurred. MCL 570.1119(3) and (4). Capital Crossing and R & R dispute who should receive the remaining lot 65 sale proceeds amounting to $72,123.45.

We conclude that the circuit court properly awarded the remaining $72,123.45 in lot 65 proceeds to the contractors. The parties agree that the first improvement of lot 65 occurred on May 2, 2002, when Throop, Inc., performed excavation work. Capital Crossing does not dispute that after May 2, 2002, Whetstone received $54,908 in draws on his line of credit purportedly going toward lot 65. Capital Crossing has offered no objection to R & R's calculations that, sometime after the May 2, 2002, excavation, the remaining lien claimants performed improvements on lot 65 amounting to more than $70,000. Capital Crossing failed to present any evidence that the bank had sought contractor waivers of priority regarding the post-May 2, 2002, funds it advanced to Whetstone related to lot 65. Even on appeal, Capital Crossing simply ignores this issue. Because (1) the bank has ignored the express statutory requirement that it obtain contractor waivers to maintain the priority of funds advanced after the date of first improvement, MCL 570.1119(4), and (2) the circuit court likewise considered the facts that (a) the contractors' substantial improvements to lot 65 had contributed to its sale price of $190,000,

and (b) permitting Capital Crossing to retain all lot 65 sale proceeds would unjustly enrich it at the contractors' expense, MCL 570.1118, once again we cannot conclude that the circuit court erred when it awarded the construction lien claimants the remainder of the lot 65 sale proceeds.[1]

Affirmed in part, reversed in part.

/s/ Jessica R. Cooper
/s/ William B. Murphy
/s/ Janet T. Neff

[1] To the extent that Capital Crossing relies on a cross-collateralization claim to support its entitlement to the remaining lot 65 proceeds, we observe that it has presented on appeal authority recognizing the concept of cross-collateralization, but no binding authority tending to support the proposition that by cross-collateralization a bank can effectively avoid the statutory mandate in § 119(4) obligating it to obtain contractor waivers to maintain priority of bank funds disbursed after the date of first improvement. Compare *Union Bank & Trust Co, NA v Farmwald Dev Corp*, 181 Mich App 538, 548-549; 450 NW2d 274 (1989).